No. ———

In The
Supreme Court of the United States

YOUNG SUN SHIN,

Petitioner,

v.

ERIC H. HOLDER, JR., Attorney General,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

YOUNG SUN SHIN
4675 Stevens Creek Blvd., #100
Santa Clara, California 95051
(408) 828-0321

Petitioner Pro Se

April 13, 2009

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED

Petitioner, Young Sun Shin asks that this Court issue a writ of certiorari to make the following determinations:

1. Whether the immigration court has the authority to decide a claim of equitable estoppel;

2. To resolve the inconsistent treatment of a defense of equitable estoppel by the United States Court of Appeals in cases involving the United States Government; and

3. Stay the deportation proceedings pending this appeal.

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

CASES

OTHER

CITATION TO OPINIONS BELOW

The decision of the United States Court of Appeals for the Ninth Circuit, *Shin v. Mukasey*, Docket Nos. 06-71955, 06-74052, is attached to this petition as Appendix A at 1a. The agency opinion issued by the Board of Immigration Appeals, In re: Shin, Young Sun, File No. A72-976-144 (BIA March 22, 2006), is attached hereto as Appendix B at 12a.

STATEMENT OF JURISDICTION

The Court of Appeals for the Ninth Circuit entered its judgment denying the timely submitted petition for review on March 4, 2008. The mandate was subsequently issued by the Ninth Circuit on February 4, 2009. The order denying review of the agency appeal is attached hereto as Appendix A at 1a. This Honorable Court's jurisdiction is hereby invoked pursuant to 28 U.S.C. §1254, as the decision below served to deprive Ms. Shin of her rights as granted under the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Central to the matter are the Fifth Amendment rights granted to aliens seeking relief from the Courts of the United States, which Amendment states, in pertinent part, that "No person . . . shall be deprived of life, liberty, or property, without due process of law."

I. STATEMENT OF THE CASE

Ms. Shin, a Korean immigrant, entered the United States in 1992. Ms. Shin received a Notice to Appear

dated June 20, 2003 charging her with being removed pursuant to INA §§212(a)(1)(A) and 212(a)(7)(A)(i)(I). On June 24, 2005 the Immigration Judge ordered removal of Ms. Shin. On June 27, 2005, Ms. Shin, through counsel, moved the Board of Immigration Appeals ("BIA") to reconsider the Immigration Judge's decision removing Ms. Shin. The motion to reconsider was made on the grounds that the Department of Homeland Security ("DHS") failed to meet its burden of clear and convincing evidence for removing Ms. Shin pursuant to INA §212(a)(7)(A)(i)(I). DHS tied their case against Ms. Shin to the government's case for fraud against a government immigration agent, without providing any direct evidence connecting Ms. Shin to the fraud. The fraud of the government employee included, among other things, issuance of hundreds of "green cards" now subject to removal proceedings by DHS. On March 22, 2006 the BIA issued an order affirming, without any opinion, the Immigration Judge's decision in this matter.

Ms. Shin, represented by counsel, filed a timely appeal with the United States Court of Appeals for the Ninth Circuit Court on April 14, 2006. Said appeal sought, among other claims, review of the immigration judge's determination that Ms. Shin's defense of estoppel was not under the authority of the immigration court. This appeal also included the granting of a Stay of the Removal Proceedings pending the outcome of the appeal. On March 8, 2008 the Ninth Circuit issued an opinion denying Ms. Shin's appeal. *See* Appendix A at 1a. The mandate of the Ninth Circuit Court opinion was issued on February 4, 2009.

II. SUMMARY OF ARGUMENT

Ms. Shin hereby asserts that the Immigration Judge erroneously and in contravention with precedent of the Supreme Court of the United States, decided that it had no authority to make a determination on a defense claim of estoppel. This erroneous finding by the Immigration Judge resulted in a defective record that failed to contain the necessary evidence and facts to support Ms. Shin's defense of estoppel and so did not provide the BIA, or any subsequent appellate court, with the opportunity to review a complete record for a defense claim of estoppel against the government.

Ms. Shin further asserts that the Court of Appeals for the Ninth Circuit not only based its analysis for the defense of estoppel on a deficient record, but also applied an analysis inconsistent with the authority set out by the Supreme Court of the United States. The analysis proffered by the Ninth Circuit, when followed to its natural conclusion would never result in a successful claim for defense by equitable estoppel against the United States Government.

III. ARGUMENT IN SUPPORT OF PETITION

a. Violation of due process.

While the immigration proceedings, although not subject to the full range of constitutional protections, must conform to the Fifth Amendment requirements of due process found in the United States Constitution, protecting a person's life, liberty or property. *See U.S. Const., Fifth Amend.* It is well settled that this Honorable Court has extended Fifth Amendment

guarantees of the due process of law to aliens in removal proceedings. *See Reno v. Flores*, 507 U.S. 292 (1993); and *Wong Yang Sung v. McGrath*, 339 U.S. 33 (1950). A successful attack on the judicial proceedings requires that the conclusions and orders issued by the Immigration Judge were "manifestly unfair" and resulted in preventing a fair investigation. *See Low Wah Suey v. Backus*, 225 U.S. 460, 468 (1912); and *Bridges v. Wixon*, 326 U.S. 135 (1945). Ms. Shin was unfairly denied the opportunity of raising a defense of equitable estoppel against the United States Government. The Immigration Judge determined that its authority was limited by statutes and regulations and therefore had "no authority under law to estop the Government from going forward with the removal proceedings against Ms. Shin." *See Appendix A* at 18a. The Immigration Judge's decision that the immigration court had no authority to determine an estoppel claim resulted in Ms. Shin being prevented from presenting evidence supporting this defense. Denying Ms. Shin the right to present evidence in support of her complete defense was a continuing error that carried through both her BIA and Ninth Circuit appeals. It is manifestly unfair to Ms. Shin and a violation of the Fifth Amendment to wrongfully prevent her from presenting a complete defense in her deportation hearing.

b. Equitable estoppel is a valid defense to deportation.

There are well established precedents showing that a defense of equitable estoppel may be brought against the United States Government in an immigration court moving for deportation where there is an affirmative conduct by the Government. *See Miranda*

v. INS, 459 U.S. 14 (1982); *Heckler v. Cmty. Health Serv.*, 467 U.S. 51 (1984); *Santiago v. INS*, 526 F.2d 488, 492 (9th Cir. 1975); *INS v. Hibi*, 414 U.S. 5 (1973).

In contradiction to precedents supporting the claim that equitable estoppel is determinable by the immigration court, the Immigration Judge erroneously ordered that it had no power "under law to estop the Government from going forward with [the] removal proceedings" and summarily dismissed the Ms. Shin's defense to the same. *See Appendix A* at 18a. Preventing Ms. Shin's defense of equitable estoppel meant that she was not allowed to enter or argue the evidence supporting her defense and was therefore harmed by not being able to use her complete arsenal against the deportation proceedings.

c. The lower courts need guidance to determine equitable estoppel claims brought against the United States Government.

There are factual scenarios established as precedents by this Honorable Court stating that a defense of equitable estoppel is available in deportation situations where there exists affirmative conduct by government employees. However, the circuit courts have taken the position that where a government employee performs an "unauthorized act" no equitable estoppel can be found. *See Appendix A* at 9a. If the Ninth Circuit's analysis is taken to its logical conclusion it can only be determined that an equitable estoppel defense will never be found because only where a government employee goes beyond its legislative or administrative rules is where an alien is harmed that would cause an appellant to raise the

defense claim of equitable estoppel. Under this line of thinking only when the government employee does not go beyond the scope of his or her employment does an alien have a defensible claim of equitable estoppel. However, if the government employee does not go beyond the scope of employment then the immigrant has no reason to seek redress because the authorized act is lawful and within the Government's authority. This line of analysis effectively eliminates the defense of equitable estoppel which this Honorable Court established many years ago.

The court found in the *Matter of Thornburgh*, 869 F.2d 1503, 1512 (D.C. Cir. 1989) that the immigration courts may be estopped from deportation for violations of the due process protections of immigrants. An immigrant's due process rights are protected by the Fifth Amendment which cannot be authorized Government conduct. There are additional case precedents where the government committed affirmative misconduct that went beyond the scope of the employment of the government employee but the court found estoppel existed. *See Salgado-Diaz v.* Gonzales, 395 F.3d 1158 (9th Cir. 2005) [estoppel was found where an immigrant's due process rights were violated by the government]; *Morgan v. Heckler,* 779 F.2d 544 (9th Cir. 1985) [to establish equitable estoppel in an employment matter the government must perform a "wrongful act" which is outside of the authorized scope]; *Watkins v. United States Army*, 875 F.2d 699, 706-711 (9th Cir. 1989)(en banc) [equitable estoppel where the Army misrepresented reenlistment information]; *Fano v. O'Neill*, 806 F.2d 1262, 1265-66 (5th Cir. 1987) [willful, wanton, reckless and negligent delay in processing immigration applications was adequate for an estoppel claim].

The Circuit Courts have also found that estoppel does not exist where the government's actions went beyond authorized actions. *See Mukherjee v. INS*, 793 F.2d 1006 (9th Cir. 1986) [no estoppel where a government employee provided misinformation]; *Jaa v. INS*, 779 F.2d 569 (9th Cir. 1986) [a delay in processing immigration applications, not an authorized employment action and amounted to neglect, but did not result in estoppel].

Ms. Shin will suffer severe injustice if forced to return to South Korea after spending more than ten years in the United States building a new and separate life. No evidence was presented in the immigration court that shows that Ms. Shin was aware of the bribery and fraud committed by the government employee. Ms. Shin relied on the issuance of her immigration papers and lived a productive life in the United States at the cost of forgoing a life in South Korea in direct reliance of the issuance of her immigration status in the United States. The Government should be estopped from shattering a productive, stable life and forcing Ms. Shin to leave this country to begin a new life in another country where ties no longer exist.

d. A Stay of Deportation Proceedings should be implemented.

Pending the appeal of Ms. Shin's matter before the Ninth Circuit Court a stay of deportation was implemented by the court to prevent Ms. Shin from suffering the unnecessary harm of deportation prior the conclusion of her appeal. With the issuance of the mandate by the Ninth Circuit the stay of deportation was terminated. With this writ Ms. Shin seeks to have

the pending deportation further stayed during the appeal before this court.

In addition to Ms. Shin's appeal there are a number of individual appeals before the Ninth Circuit Court based on similar factors caused by the actions of the government employee in this matter. In addition to the individual claims of Ms. Shin an action has been filed before the United States District Court seeking class action status for claims similar to Ms. Shin that may be certified as a class action and include Ms. Shin. The District Court case is currently on appeal before the Ninth Circuit Court, *Chung v. Mukasey,* No. 07-5554.

CONCLUSION

For the reasons set forth above, Ms. Shin requests that this Court assumes jurisdiction over this case, grant a stay of deportation pending this appeal, and find that this writ be granted.

Respectfully submitted,

YOUNG SUN SHIN, PRO SE
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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Nos. 06-71955, 06-74052
Agency No. A72-976-144

[Filed March 4, 2008]

YOUNG SUN SHIN, *Petitioner*,	)
v.	)
MICHAEL B. MUKASEY, Attorney General, *Respondent.*	)

OPINION

On Petition for Review of an Order of the Board of Immigration Appeals

Argued and Submitted
December 7, 2007—San Francisco, California

Before: Dorothy W. Nelson and Carlos T. Bea, Circuit Judges, and Louis F. Oberdorfer,* Senior District Judge.

Opinion by Judge Bea

COUNSEL

Alex Park, Santa Clara, California, for the petitioner.

William Roppolo, Liquita Thompson, Celina Joachim, Jordan Faykus, Kendra Massumi, Baker & McKenzie LPP, Miami, Florida, Pro Bono Amicus Curiae for the petitioner.

Peter Keisler, James Grimes, Sarah Maloney, United States Department of Justice, Washington, D.C., for the respondent.

OPINION

BEA, Circuit Judge:

We consider today whether an alien who overstayed her tourist visa, and then paid $10,000 for the purchase of a fraudulent alien registration card (known as a "green card") manufactured by a corrupt federal immigration employee, can bar the government from removing her from this country on the grounds the government is estopped to assert the green card is bogus. Unsurprisingly, we hold the government cannot

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* The Honorable Louis F. Oberdorfer, Senior United States District Judge for the District of Columbia, sitting by designation.

be saddled with the felonious, unauthorized issuance of residency documentation by a thieving employee.

Young Sun Shin petitions for review from a final order of removal from the Board of Immigration Appeals ("BIA") and from the BIA's denial of her motion to reopen. Petitioner also seeks a remand to file a second motion to reopen. Petitioner claims the government failed to meet its burden of showing she was removable. As a fallback, she claims that, because government employee Leland Sustaire engaged in affirmative misconduct, the government should be estopped from removing her. Petitioner expressly conceded removability. She did not apply for any form of relief from removability. Her due process violation claims are without merit. Hence, we deny her petition for review of the removal order.

Petitioner also seeks reconsideration of the BIA's denial of her motion to reopen and she seeks a remand to file a second motion to reopen to adjust her status. The BIA denied her motion to reopen because petitioner failed to attach the necessary documentation showing she was entitled to adjust her status. Because petitioner does not now demonstrate she would be entitled to adjust her status on remand, nor that the BIA's denial of her motion to reopen was error, her petition for review from the denial of her motion to reopen and her motion to remand are also denied.

I.

Petitioner, a native and citizen of the Republic of Korea ("South Korea"), originally entered the United States in June of 1993 on a tourist visa that allowed her to remain for six months. In October of 1994,

petitioner received an alien registration card (a "green card") which adjusted her status to a lawful permanent resident. The card allowed her to stay in the United States as the spouse of a skilled worker or professional holding a baccalaureate degree. At the time, petitioner had no husband; she had been divorced for three years. What is more, her former husband, who had never been to the United States, held only a high school diploma.

Petitioner obtained her permanent resident status through Kyun Min Lee ("Lee"), a runner for Leland Sustaire, who was using his government position to sell fraudulent green cards. For a complete background on Sustaire and the conspiracy, see this court's opinion in *Hong v. Mukasey*, No. 06-72823.

Petitioner paid Lee $10,000 to obtain her green card. She never went to an Immigration and Naturalization Office ("INS") office, nor was she interviewed by an INS agent. Petitioner claims she was unaware of the fraud until she saw an article about Lee's indictment in 2000.

Sustaire had compiled a list of "A" numbers that identified aliens who had obtained unlawful changes in their status as a result of his fraudulent scheme. Petitioner's number appeared on this list. Petitioner came to the attention of the INS when, as part of a plea bargain, Sustaire's attorney delivered the list to the Department of Homeland Security's ("DHS") Office of the Inspector General. Petitioner was charged with removability for being an alien not in possession of valid documents for admission under Immigration and Nationality Act ("INA") § 237(a)(1)(A), *codified at* 8 U.S.C. § 1227(a)(1)(A), and for remaining in the United

States for a time longer than permitted under INA § 237(a)(1)(B), *codified at* 8 U.S.C. § 1227(a)(1)(B).

At the hearing, in exchange for the government's agreement to drop an additional fraud charge pending against petitioner, petitioner conceded she did not possess valid immigration documents. Petitioner denied the charge that she had remained in the United States longer than permitted. However, she did not apply for any form of relief from removal.

The Immigration Judge ("IJ") sustained both charges of removability and ordered petitioner removed to South Korea. The IJ declined to address petitioner's argument that the government had "unclean hands" in the removal proceeding because of Sustaire's misconduct and, therefore, should be estopped from removing her.

On appeal, the BIA adopted and summarily affirmed the IJ's decision. Petitioner then filed a motion to reopen to file an application to adjust her status. In support of her motion to reopen, petitioner submitted a copy of her application and documentation of an approved labor certification. However, she failed to attach an approved I-140 Form (a petition to adjust her status to an alien worker) or other pertinent documentation, as required by 8 C.F.R. § 1003.2(c). Accordingly, the BIA denied her motion to reopen.

II.

When the BIA adopts the decision of the IJ, we "review the IJ's decision as if it were that of the BIA." *Abebe v. Gonzales*, 432 F.3d 1037, 1039 (9th Cir. 2005) (en banc).

We review "the IJ's findings of fact for substantial evidence and will uphold these findings if they are supported by reasonable, substantial, and probative evidence on the record considered as a whole." *Id.* at 1039-40 (quotation marks and citation omitted). We review questions of law, including due process challenges, *de novo*. *Ramirez-Alejandre v. Ashcroft*, 319 F.3d 365, 377 (9th Cir. 2003).

We have jurisdiction to review the BIA's final order of removal against petitioner. 8 U.S.C. § 1252.

Petitioner argues the government should be estopped from removing her due to Sustaire's actions. Under 8 U.S.C. § 1252(g), we have no "jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders . . . ." *See also Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). However, we have jurisdiction over petitioner's equitable estoppel claim because it arises from actions taken by a corrupt government employee prior to any decision made by the Attorney General to commence proceedings against her. *See Wong v. United States*, 373 F.3d 952, 965 (9th Cir. 2004) (holding that "§ 1252(g) does not bar review of actions that occurred *prior* to any decision to 'commence proceedings' ").

III.

[1] Substantial evidence supports the IJ's finding petitioner remained in the United States longer than permitted. Petitioner was admitted to the United States as a visitor for six months in 1993 and later obtained an invalid resident alien card as part of

Sustaire's criminal, fraudulent scheme. On the basis of this documentary evidence and also considering Sustaire's testimony before the court, the IJ found "there is no doubt . . . [Shin] is not and has never been in possession of a valid resident alien card." The evidence proves the only lawful basis for petitioner's presence in the United States was her visitor's visa which allowed her to stay for only six months and expired in December of 1993. Hence, substantial evidence supports the IJ's ruling petitioner was removable for having remained in the United States longer than allowed by her valid immigration documents.

[2] Petitioner argues the government failed to meet its burden of showing she was removable under INA § 237(a)(1)(A). "The government has the initial burden of establishing the alien's deportability by clear and convincing evidence." *Estrada v. INS*, 775 F.2d 1018, 1020 (9th Cir. 1985). However, where the alien concedes removability, "the government's burden in this regard is satisfied." *Id.* At the hearing before the IJ, petitioner's counsel expressly conceded removability on the ground she was not in possession of valid documents for admission. Additionally, petitioner did not apply for any form of relief from removability. On the basis of petitioner's concession, the government's burden is satisfied and petitioner's claim is without merit. *Id.*

IV.

[3] The transcript of Sustaire's confessional deposition, Sustaire's list of the A Numbers of aliens to whom he fraudulently gave green cards, and the records of criminal convictions in Sustaire's and Lee's

cases, were all admitted at petitioner's hearing. In the interest of judicial economy, the IJ arranged for Sustaire to be deposed on two different dates, first by attorney Alex Park, who represented petitioner and over 100 other aliens, and then by the attorneys representing the remaining aliens. Petitioner, through counsel, objected to the use of Sustaire's consolidated testimony and now alleges the IJ violated her due process rights by admitting Sustaire's deposition testimony in her removal proceedings. We disagree.

[4] "In order to successfully attack by judicial proceedings the conclusions and orders made upon such [removal] hearings it must be shown that the proceedings were manifestly unfair" and that the actions of the IJ were such as to prevent a fair investigation. *Low Wah Suey v. Backus*, 225 U.S. 460, 468 (1912). Petitioner's proceeding was not so fundamentally unfair that she was prevented from reasonably presenting her case. Petitioner's counsel participated in Sustaire's deposition and was allowed to cross-examine him. Petitioner also had the benefit of hearing and comparing Sustaire's responses to other attorneys' questions. Additionally, during each alien's hearing, Sustaire was made available if additional testimony was needed. Most importantly, petitioner was given an individual hearing before an IJ where any defenses or claims for relief were heard. Because we find no procedural defect amounting to a due process violation in this procedure, petitioner's due process claim fails.

V.

[5] Petitioner contends the government should be equitably estopped from removing her. At the heart of

her estoppel argument is the claim she was unaware "of the bribery and fraud committed by Sustaire," and she "relied on the issuance of the immigration papers and lived a productive life in the United States at the cost of . . . [pursuing] a life in South Korea."

Estoppel requires the following:

> (1) the Party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury.

Watkins v. United States Army, 875 F.2d 699, 709 (9th Cir. 1989) (en banc) (quotation marks and citation omitted). Here, we need not reach any of the elements of estoppel because "it is well settled that the government is not bound by the *unauthorized* acts of its agents." *Id.* at 707; *see also Utah Power & Light Co. v. United States*, 243 U.S. 389, 409 (1917) ("[T]he United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.").

[6] Sustaire was a government employee who took bribes and engaged in fraud, crimes for which he was convicted. There is no dispute that Sustaire's acts were unauthorized. Thus, the threshold requirement for applying equitable estoppel against the government is not satisfied in this case.

VI.

[7] Petitioner also requests remand to the BIA so she may thereby file a second motion to reopen. A motion to reopen must, among other things, state the new facts to be considered at the reopened hearing and be supported by affidavits or other evidentiary materials demonstrating *prima facie* eligibility for the relief sought. 8 C.F.R. § 1003.2(c)(1). The BIA denied petitioner's initial request for reopening to apply for adjustment of status because she failed to submit a copy of an approved I-140 Form (a petition to adjust her status to an alien worker) or other documentation which would satisfy the regulatory requirements under 8 C.F.R. § 1003.2(c)(1). Although petitioner contends she has filed an I-140 Form, as was the case before, she did not include any documentation to show her application has been approved. Aliens who seek to remand or reopen proceedings to pursue relief bear a "heavy burden" of proving that, if proceedings were reopened, the new evidence would likely change the result in the case. *Matter of Coelho*, 20 I. & N. Dec. 464, 473 (BIA 1992). Petitioner has not met this burden because she has failed to cure the defects that led to her motion to reopen being denied in the first place.

[8] Further, aliens are entitled to file only one motion to reopen. *See* 8 C.F.R. § 1003.2(c)(2) (providing that a party may file only one motion to reopen proceedings and that motion must be filed within 90 days after the date on which a final administrative decision was filed). Petitioner is now barred from filing a second motion to reopen. *Id*. Accordingly, petitioner's

motion to remand to file a second motion to reopen is denied.

DENIED.

APPENDIX B

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A72-976-144 - San Francisco

Date: MAR 22, 2006

In re: SHIN, YOUNG SUN

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Alex C. Park

ON BEHALF OF DHS: Grace H. Cheung, Assistant Chief Counsel

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 1003.1(e)(4).

/s/
FOR THE BOARD

IMMIGRATION COURT
550 KRANNY ST. SUITE 800
SAN FRANCISCO, CA 94108

In the Matter of:
Respondent Young Sun Shin

Case: A72 976 144
In Removal Proceedings

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 5/20/05. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[x] The respondent was ordered removed from the United States to South Korea.

* * *

Appeal waived Reserved A/I/B
Appeal due by: 6/20/05

/s/ _____

Anthony S. Murry
Immigration Judge

Date: 5/20/05

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: Personal Service [✓]

To: [✓] ALIEN'S ATTY/REP [✓] INS
Date: 5/20/05 By: COURT STAFF /s/_____

* * *

0009f/ASM/825/NC

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
San Francisco, California

File No.: A 72 976 144 May 20, 2005

In the Matter of

YOUNG SUN SHIN,) IN REMOVAL
) PROCEEDINGS
Respondent)

CHARGE: Section 237 (a) (1) (A) - alien not in possession of valid immigration documents, and 237 (a) (1) (B) - alien who remained in the United States for a time longer than permitted.

APPLICATIONS: None.

ON BEHALF OF RESPONDENT:
Alex Park, Esquire

ON BEHALF OF GOVERNMENT:
James Knapp, Esquire
Grace Chung, Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent, in this case, was served with a Notice to Appear on June 17, 2003, which alleged that she is not a citizen nor national of the United States but rather a native and citizen of Korea. The NTA further alleged that the respondent was admitted to the United States in June 1993 as a visitor for

pleasure with authoritization to remain for six months. Further, the NTA stated that in August of 1994, an INS officer caused an immigration record to be created showing that the respondent was adjusted to permanent resident status and an immigration form I-551 (indiscernible] an alien card created but that these documents were illegally and factually baseless. That a form I-551, resident alien card, was in fact issued without legal or factual basis and that the respondent remained in the United States beyond the six month period of her visitor visa authorization without approval from INS.

Lastly, the NTA asserted that the respondent, at this time, does not possess valid documents allowing her to remain in the United States.

The respondent has admitted all the factual allegations of the Notice to Appear and conceded the first charge of removability, namely that she is not in possession of valid immigration documents and denied the charge that she remained in the United States for a time longer than permitted. The Government has submitted documents, including a form I-213 and a record of sworn statement, which indicate quite clearly that the respondent was admitted to the United States as a visitor, subsequently obtained a resident alien card as part of a criminal fraudulent scheme involving former INS employee Leland Dwayne Sistair and other co-conspirators, and that the green card she was issued is not valid, and in addition, the documents show clearly that the only lawful basis the respondent had for presence in the United States was her visitor's visa, which expired in December of 1993.

Accordingly, the Court will sustain all the factual allegations and both charges of removability contained in the Notice to Appear. The respondent, as noted above, is an individual who obtained her resident alien card as a result of a fraudulent scheme. There's no allegation by the Government, at this stage of the proceedings, that the respondent knowingly engaged in any fraudulent behavior. Rather, what happened in this case, as in several others pending before this Court is that Mr. Sistair between 1997 and 1998 entered into a criminal conspiracy with five Korean American individuals in northern California. As part of that conspiracy, Mr. Sistair's co-conspirators approached various individuals including the respondent and represnted to the respondent that the co-conspirators could obtain resident alien cards because they worked with particularly skilled attorneys and other business professionals. Mr. Sistair's co-conspirators solicited monetary payments, which they represented to be attorney's fees and processing fees, and then shared those fees between themselves and Mr. Sistair. Rather than being attorney's fees and processing fees, the portion of the money that went to Mr. Sistair was in fact a bribe. And upon receipt of the bribe, Mr. Sistair, who was authorized in his position as a superviory INS official, to order the issuance of green cards, in fact ordered a green card for among other people, this respondent. An INS Service Center processed a green card, and a legitimate identification number was issued for the green card. However, Mr. Sistair testified under oath in this court and under oath in federal court subject to cross-examination that he did not, prior to ordering the issuance of the green cards with respect to any individuals involved in these cases including this respondent. He did not obtain proper documentation

showing that the respondent was eligible for the green card, as issued. Nor did he conduct interviews as required by law, nor obtain identity documents and perform background checks, all required by statute and regulation before the issuance of the green card. In substance, Mr. Sistair used his authority or misused his authority to issue the green card simply because he had received a payment from his co-conspirators. Mr. Sistair eventually plead guilty to his involvement in the scheme.

And as noted above, testified in court against his co-conspirators, all of whom were convicted in federal court for their part in the scheme.

There is no doubt, looking at the extensive documentation in the record, which includes a list prepared by Mr. Sistair of the numbers associated with the fraudulently issued green cards and that list includes the number on the respondent's green card. There is no doubt looking at all that documentation and considering also Mr. Sistair's testimony before this Court, which the Court found to be entirely forthright and credible, that this respondent is not and has never been in possession of a valid resident alien card.

That really is the essence of the charge in the Notice to Appear and the only material issue before this Court. And the Court finds that the respondent is not in possession and has not been in possession of a valid resident alien card.

Respondent has made no applications for relief. She has, however, raised the legal issue asserting that DHS should be estop from removing her because Mr. Sistair, as an agent of the Government, engaged in

affirmative misconduct and the Government's hands are unclean in this removal proceeding.

For purposes of this proceeding, it suffices to say that this Court, being a creature of statute and regulation with powers limited by the statutes and regulations has no authority under law to estop the Government from going forward with these removal proceedings. And the only issue that the Court is empowered to decide is whether the respondent has valid Immigration documents. And if not, adjudicate any applications for relief.

As noted above, the respondent does not have valid documents. She is not applying for any form of relief. And accordingly, the respondent will be ordered removed to South Korea.

Appeal has been reserved for the respondent.

/s/
ANTHONY S. MURRY
Immigration Judge

CERTIFICATE [illegible]

I hereby certify that the attached proceeding before ANTHONY S. MURRY, in the matter of:

YOUNG SUN SHIN
A 72 976 144
San Francisco, California

was held as herein appears, and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

/s/
Ferdinand Basilio (Transcriber)

Deposition Services, Inc.
6245 Executive Boulevard
Rockville, Maryland 20852
(301) 881-3344

November 14, 2005
(Completion Date)

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 06-71955
Agency No. A72-976-144

[Filed January 16, 2009]

YOUNG SUN SHIN,	)
	)
Petitioner,	)
	)
v.	)
	)
MICHAEL B. MUKASEY, Attorney General,	)
	)
Respondent.	)
	)

ORDER

Before: D.W. NELSON and BEA, Circuit Judges, and OBERDORFER,* District Judge.

Judge Bea has voted to deny the suggestion for rehearing en banc, and Judges D.W. Nelson and

* The Honorable Louis F. Oberdorfer, Senior United States District Judge for the District of Columbia, sitting by designation.

Oberdorfer have so recommended. All judges voted to deny the petition for panel rehearing.

The suggestion for rehearing en banc has been circulated to the full court, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35(b).

Petitioner's petition for panel rehearing and suggestion for rehearing en banc are denied.